IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 319 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DY.COMMISSIONER OF CUSTOMS

Versus

BHASKARBHAI SAJJANBHAI SARDAR

Appearance:

1. Criminal Revision Application No. 319 of 2001

MR MUKESH R SHAH for Petitioner No. 1-2

DELETED for Respondent No. 1-3

NOTICE UNSERVED for Respondent No. 4

MR BY MANKAD PUBLIC PROSECUTOR for Respondent No. 5

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 27/09/2001

ORAL JUDGEMENT

#. This Revision Application is filed by the petitioner No.1 i.e. the Dy. Commissioner of Customs and petitioner No.2 - Inspector of Customs Office, Bhavnagar

against the order passed by the learned Special Judge, Bhavnagar on 25.6.2001 discharging original accused No.4 and respondent No.1 herein Bhaskarbhai Sajjanbhai Sardar in Special Case (N.D.P.S.) No.8/1999 for the charges under Section 20 of the Narcotics Drugs & Psychotropic Substances Act, 1985. As per the facts of the case, against 3 accused viz. (1) Mahesh Gopalbhai, (2) Narsinhbhai M. Gohel and (3) Nayan Chhotubhai Joshi, one N.H.Bhatt - petitioner No.2 - herein Inspector of Customs, Office of Commissioner of Customs, Bhavnagar filed a private complaint for the offences punishable under Section 20 of the Narcotics Drugs & Psychotropic Substances Act, 1985, and thereafter, the present respondent No.1 - Bhaskarbhai Sajjanbhai Sardar was arraigned as an accused No.4 in the said complaint. Before framing of the charge, the complainant examined in all, 13 witnesses and produced 17 documents on record. As per the incident, Inspector of Custom & Excise Mr.A.H.Dodiya and Mr.D.R.Gohil received the information that accused Mahesh Patel resident of Bhavnagar and one person viz. Narubha Rajput were trying to sell 500 grams of narcotic substance worth Rs.1,50,000/-, but, the exact information of such sale was not received by the Inspectors above said. Inspector Mr.Dodiya and Mr.Gohil both arranged the trap and it was decided that Mr.Dodiya will be the purchaser in the so called arranged trap. The sale was arranged in Live-in-Hotel in Bhavnagar. Inspector - Mr.Gohil according to a trap arranged, acted as a customer and contacted Narubha and it was decided that on 27.10.1998 said Narubhai shall take narcotic substance and accordingly on the date as decided one Mahesh Patel accused No.1 was caught red-handed and from his possession, on raiding, narcotic drug was seized. Panchnama was drawn and Narcotic substance i.e. heroin weighing about 422 grams worth Rs.6,00,000/- was found. During investigation, it was found that the said heroin was sent by Nayan Joshi - accused No.3 to accused No.1 Mahesh Patel. It was also disclosed in the investigation that the present respondent No.1 Bhaskarbhai Sajjanbhai Sardar, who is Police Constable had given this heroin to accused No.3 - Nayan Joshi. From these facts, learned Special Judge on filing complaint, issued non bailable warrant against accused Nos.1, 2 and 3 and, thereafter, non bailable warrant was issued against accused No.4 Bhaskarbhai Sajjanbhai Sardar also, who is respondent No.1 herein.

#. After recording of the evidence, the learned Special Judge recorded finding vide order impugned herein that against accused Nos.1, 2 and 3 i.e. Mahesh Patel, Narsangbhai Gohil and Nayan Joshi, there were sufficient

grounds to proceed with and charge was ordered to be framed against these accused. So far as the accused No.4 - respondent No.1 herein is concerned, learned Special Judge came to a conclusion that there was no evidence against accused No.4 Bhaskarbhai Sajjanbhai Sardar and, therefore, he was discharged and hence this Revision Application is filed being aggrieved by the said order of the Special Judge.

#. Learned advocate Mr.M.R.Shah, for the petitioner-applicant herein and learned APP Mr.B.Y. Mankad, for respondent No.2 - State were heard. While respondent No.1 Bhaskarbhai though served has not appeared before this Court. It was vehemently urged on behalf of the petitioner that it is serious nature of offence wherein the strictest view is required to be taken. It was urged that the order of the learned Special Judge is contrary to the evidence on record. It is urged that from the evidence of the witness produced by the complainant under Section 244, it should have been held that there is sufficient evidence to frame charges against respondent No.1. If the statement of the respondent No.1 - original accused No.4 is read with the statement of the accused Nayan Joshi, the fact clearly emerges that the present respondent No.1 was involved in the crime. It was ultimately urged that the order impugned be set aside and the Special Judge be directed to frame charges against the present respondent No.1 Bhaskarbhai Sajjanbhai Sardar, who is original accused No.4. Learned APP Mr.B.Y.Mankad was heard.

#. From the record available and from the contention raised the fact which clearly emerges is that admittedly there is no other evidence against the respondent No.1-accused No.4 except his own statement before the Investigating Agency and the statement of the co-accused Nayan Chandubhai Joshi discloses the fact that he had given this heroin to Mahesh Patel, who had obtained this quantity of heroin from respondent No.1 Bhaskarbhai Sajjanbhai Sardar while in the statement of Bhaskarbhai Sajjanrbhai Sardar - respondent No.1 herein, - original accused No.4 he has denied to have given any heroin to accused Nayan Chandubhai Joshi. Bhaskarbhai Sajjanbhai Sardar has stated that he did not know accused Nos.1, 2 and 3. The evidence discloses that photographs of Bhaskarbhai Sajjanbhai Sardar were attempted to be identified by other accused Nos.1, 2 and 3 but accused Nos.1, 2 and 3 could not identify the Bhaskarbhai Sajjanbhai Sardar and further statement of accused Nos.1, 2 and 3 are not recorded after this identification parade and, therefore, having considered the evidence on record

there is nothing against the present respondent No.1 except a statement of co-accused Nayan Joshi, which is not corroborated by any other evidence. It is also not disclosed in the evidence that how respondent No.1Bhaskarbhai Sajjanbhai Sardar is connected with other accused and nothing is seized from respondent No.1. In these circumstances, the Special Judge was right in coming to the conclusion that even if taking into consideration the evidence as it was there was no sufficient evidence to proceed against Bhaskarbhai Sajjanbhai Sardar and, therefore, the Special Judge rightly discharged the respondent No.1 original accused No.4 Bhaskarbhai Sajjanbhai Sardar of the charges under Section 20 of Narcotic Drugs & Substance Act.

#. In this view of the matter, this Revision Application fails and dismissed. Rule is discharged. Interim relief granted on 24.8.2001 is vacated.

(J. R. VORA, J.)

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